

# SENATE MOTION

**MADAM PRESIDENT:**

**I move** that Engrossed House Bill 1250 be amended to read as follows:

- 1 Page 13, between lines 4 and 5, begin a new paragraph and insert:
- 2 "SECTION 6. IC 6-9-43 IS ADDED TO THE INDIANA CODE AS
- 3 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON
- 4 PASSAGE]:
- 5 **Chapter 43. Uniform County Food and Beverage Tax**
- 6 **Sec. 1. (a) This chapter applies only to a county that does not**
- 7 **impose a food and beverage tax under any other chapter of IC 6-9.**
- 8 **(b) If:**
- 9 **(1) a county imposes a uniform county food and beverage tax**
- 10 **under this chapter; and**
- 11 **(2) a city or town in the county imposes a food and beverage**
- 12 **tax under IC 6-9;**
- 13 **the uniform county food and beverage tax imposed by the county**
- 14 **under this chapter is in addition to the food and beverage tax that**
- 15 **the city or town imposes under IC 6-9.**
- 16 **Sec. 2. Except as otherwise provided, the definitions in IC 36-1-2**
- 17 **apply throughout this chapter.**
- 18 **Sec. 3. As used in this chapter, "beverage" includes an alcoholic**
- 19 **beverage.**
- 20 **Sec. 4. As used in this chapter, "bonds" has the meaning set**
- 21 **forth in IC 5-1-11-1.**
- 22 **Sec. 5. As used in this chapter, "department" means the**
- 23 **department of state revenue.**
- 24 **Sec. 6. As used in this chapter, "food" means any food product.**
- 25 **Sec. 7. As used in this chapter, "gross retail income" has the**
- 26 **meaning set forth in IC 6-2.5-1-5.**
- 27 **Sec. 8. As used in this chapter, "obligations" has the meaning set**
- 28 **forth in IC 5-1-3-1(b).**
- 29 **Sec. 9. As used in this chapter, "person" has the meaning set**
- 30 **forth in IC 6-2.5-1-3.**
- 31 **Sec. 10. As used in this chapter, "retail merchant" has the**

1 meaning set forth in IC 6-2.5-1-8.

2       **Sec. 11. (a)** After January 1 but before August 1, the fiscal body  
3 of a county may adopt an ordinance to impose an excise tax known  
4 as the uniform county food and beverage tax on transactions  
5 described in section 13 of this chapter. Subject to section 12 of this  
6 chapter, an ordinance adopted under this subsection must specify  
7 the rate at which the uniform county food and beverage tax is  
8 imposed in the county.

9       **(b)** Before the fiscal body of a county may adopt an ordinance  
10 imposing the uniform county food and beverage tax, the fiscal body  
11 must hold a public hearing on the proposed ordinance, with notice  
12 of the time, date, and place of the public hearing given in  
13 accordance with IC 5-3-1.

14       **(c)** If the fiscal body of a county adopts an ordinance under this  
15 chapter, the ordinance takes effect January 1 of the year following  
16 the year in which the ordinance is adopted.

17       **(d)** This subsection does not apply to a county governed under  
18 IC 36-2-3.5. If the fiscal body of a county adopts an ordinance to  
19 impose the uniform county food and beverage tax under this  
20 chapter, the county executive must also adopt a substantially  
21 similar ordinance to impose the tax.

22       **(e)** This subsection applies to a county governed under  
23 IC 36-2-3.5. If the fiscal body of a county adopts an ordinance to  
24 impose the uniform county food and beverage tax under this  
25 chapter, the county executive must approve the ordinance in the  
26 manner prescribed by IC 36-2-4-8 to impose the tax.

27       **(f)** If an ordinance is adopted under subsection (d) or approved  
28 under subsection (e), the county executive shall immediately send  
29 a certified copy of the ordinance to the department.

30       **Sec. 12.** The uniform county food and beverage tax under this  
31 chapter may be imposed at the rate of one percent (1%) or at the  
32 rate of two percent (2%) of the gross retail income received by a  
33 retail merchant in the county for a transaction described in section  
34 13 of this chapter. For purposes of this chapter, the gross retail  
35 income received by the retail merchant from such a transaction  
36 does not include:

37               **(1)** the amount of tax imposed on the transaction under  
38 IC 6-2.5; and

39               **(2)** the amount of food and beverage tax imposed by a city  
40 under IC 6-9, if any.

41       **Sec. 13. (a)** Except as provided in subsection (c), a uniform  
42 county food and beverage tax imposed under this chapter applies  
43 to any transaction in which food or beverage is furnished,  
44 prepared, or served:

45               **(1)** for consumption at a location, or on equipment, provided  
46 by a retail merchant;

47               **(2)** in the county in which the tax is imposed; and

48               **(3)** by a retail merchant for consideration.

(b) Transactions described in subsection (a)(1) include transactions in which food or beverage is:

- (1) served by a retail merchant off the merchant's premises;
- (2) sold in a heated state or heated by a retail merchant;
- (3) comprised of two (2) or more food ingredients mixed or combined by a retail merchant for sale as a single item (other than food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal Food and Drug Administration in chapter 3, subpart 3-401.11 of its Food Code so as to prevent food borne illnesses); or
- (4) sold with eating utensils provided by a retail merchant, including plates, knives, forks, spoons, glasses, cups, napkins, or straws (for purposes of this subdivision, a plate does not include a container or packaging used to transport the food).

(c) A uniform county food and beverage tax imposed under this chapter does not apply to furnishing, preparing, or serving any food or beverage in a transaction that is exempt or to the extent the transaction is exempt from the state gross retail tax imposed under IC 6-2.5.

Sec. 14. (a) An ordinance adopted under this section must be adopted after January 1 but before September 1 of a year. The fiscal body shall send a certified copy of the ordinance adopted under this section to the department.

(b) If a uniform county food and beverage tax is imposed in a county at a rate of one percent (1%), the fiscal body of the county may, subject to section 11(b) through 11(f) of this chapter, adopt an ordinance to increase the rate at which the uniform county food and beverage tax is imposed in the county to two percent (2%).

(c) If a uniform county food and beverage tax is imposed in a county at a rate of two percent (2%), the fiscal body of the county may, subject to section 11(b) through 11(f) of this chapter, adopt an ordinance to decrease the rate at which the uniform county food and beverage tax is imposed in the county to one percent (1%).

(d) The fiscal body of a county that imposed the uniform county food and beverage tax under this chapter may adopt an ordinance to repeal the uniform county food and beverage tax.

Sec. 15. (a) The fiscal body of a county that imposes a uniform county food and beverage tax may adopt an ordinance, or a provision in an ordinance adopted under this chapter, requiring retail merchants to report and remit uniform county food and beverage tax collected under this chapter directly to the county treasurer

(b) This subsection applies to a county that adopts an ordinance, or a provision in an ordinance, under subsection (a). The uniform county food and beverage tax shall be reported on forms approved by the county treasurer, and shall be paid monthly to the county

1 treasurer not more than twenty (20) days after the end of the  
 2 month in which the tax is collected. All provisions of IC 6-2.5  
 3 relating to rights, duties, liabilities, procedures, penalties,  
 4 exemptions, and definitions apply to the imposition of the uniform  
 5 county food and beverage tax imposed under this chapter except as  
 6 otherwise provided by this chapter, and except that the county  
 7 treasurer, and not the department of state revenue, is responsible  
 8 for administration of the tax. All provisions of IC 6-8.1 apply to the  
 9 county treasurer with respect to the uniform county food and  
 10 beverage tax imposed by this chapter in the same manner that they  
 11 apply to the department of state revenue with respect to the other  
 12 listed taxes under IC 6-8.1-1-1.

13 Sec. 16. (a) This section applies to a county that does not adopt  
 14 an ordinance, or a provision in an ordinance, under section 15 of  
 15 this chapter.

16 (b) A uniform county food and beverage tax imposed under this  
 17 chapter shall be imposed, paid, and collected in the same manner  
 18 that the state gross retail tax is imposed, paid, and collected under  
 19 IC 6-2.5. However, the return that is filed for the payment of the  
 20 tax may be made on a separate return or may be combined with  
 21 the return filed for the payment of the state gross retail tax as  
 22 prescribed by the department.

23 (c) The department shall notify the county auditor of a county  
 24 that imposes a uniform county food and beverage tax under this  
 25 chapter of the amount of uniform county food and beverage tax  
 26 paid in the county.

27 (d) The amounts received from a uniform county food and  
 28 beverage tax imposed under this chapter shall be paid monthly by  
 29 the treasurer of state on warrants issued by the auditor of state to  
 30 the county treasurer of the county that imposed the tax.

31 Sec. 17. A county treasurer of a county that imposes the uniform  
 32 county food and beverage tax under this chapter shall establish a  
 33 uniform county food and beverage tax revenue fund into which  
 34 shall be deposited all amounts received monthly under this chapter  
 35 from:

- 36 (1) the treasurer of state; or
- 37 (2) if an ordinance, or a provision of an ordinance is adopted  
 38 in the county under section 15(a) of this chapter, the retail  
 39 merchants in the county.

40 Sec. 18. (a) A county auditor shall distribute uniform county  
 41 food and beverage tax revenue received under this chapter to the  
 42 political subdivisions of the county in the manner prescribed in this  
 43 section.

44 (b) Each month, uniform county food and beverage tax revenue  
 45 that is received under subsection (a) must be distributed and used  
 46 in the manner specified:

- 47 (1) by ordinance of the county council under  
 48 IC 6-3.5-1.1-26(f), in the case of a county that has adopted a

1 tax rate under IC 6-3.5-1.1-26;

2 (2) by ordinance of the county income tax council under  
3 IC 6-3.5-6-32(f), in the case of a county that has adopted a tax  
4 rate under IC 6-3.5-6-32; or

5 (3) by ordinance of the fiscal body of the county restricted to  
6 the alternatives described in IC 6-3.5-1.1-26(f)(1) through  
7 IC 6-3.5-1.1-26(f)(3), in the case of a county that has not  
8 adopted a tax rate under IC 6-3.5-1.1-26 or IC 6-3.5-6-32.

9 (c) In the case of a county that has not adopted a tax rate under  
10 IC 6-3.5-6-32, IC 6-3.5-1.1-26(g) and IC 6-3.5-1.1-26(h) apply to the  
11 uniform county food and beverage tax revenue distributed under  
12 subsection (b).

13 (d) In the case of a county that has adopted a tax rate under  
14 IC 6-3.5-6-32, IC 6-3.5-6-32(g) and IC 6-3.5-6-32(h) apply to the  
15 uniform county food and beverage tax revenue distributed under  
16 subsection (b).".

17 Renumber all SECTIONS consecutively.

(Reference is to EHB 1250 as printed February 15, 2008.)

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Senator ZAKAS